IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:1/10/2004

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

WRIT PETITION NO.4826 of 1997

Karuppanna Gounder
Dharmakartha,
Karuppanna Swamy Temple,
Karuthipalayam,
Erode Taluk,
Periyar District. .. Petitioner

-Vs-

1. The Special Commissioner &
Commissioner of Land Administration,
Chepauk, Chennai-5.

2. The District Revenue Officer,
Periyar District, Erode.

3. The Revenue Divisional Officer,
Erode, Periyar District.

4. The Tahsildar,
Erode Taluk, Periyar District.

5. Karuppaiah

6. Ramasamy .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of certiorarified mandamus as stated therein.

For petitioner : Mr.P.K.Rajagopal

For respondents : Mr.R.Chandrasekaran
Govt. Advocate for R1-R4
No appearance for R5&R6.

:O R D E R

This Writ Petition has been filed by the petitioner praying to issue a writ of certiorarified mandamus to call for the records pertaining to the orders of the first respondent dated 30.9.1996 made in No.D.Dis.F2/53933/94 confirming the orders of the second respondent dated 14.6.1994 made in No.Na.Ka.44430/93-K3, quash the same and consequently direct the respondents 1 to 4 to restore the tree patta in respect of the 13 coconut trees in Survey No.79/2, of Karuthipalayam Village of Erode Taluk, Periyar District to the petitioner's Temple.

2. The case of the petitioner is that 13 coconut trees standing in the temple poromboke comprised in survey No.79/2 of Ichipalayam Village, Erode Taluk were planted and grown under the care of the temple belonging to a particular community called Pattali Vettuva Gounders and its devotees represented by him.

3. The further case of the petitioner is that the 4th respondent, who is well aware of the situation in the village, passed an order dated 28.8.1992 in proceedings No.NK 8295/91G granting a 2C patta in respect of the said 13 trees thereby allowing the temple to maintain the said trees and to utilise the usufructs from the said trees to maintain the temple.

4. The further case of the petitioner is that the respondents 5 and 6, out of a misunderstanding, preferred an appeal against the orders of the fourth respondent with the third respondent; that the third respondent dismissed the appeal on 18.1.1993 confirming the order of the fourth respondent; that the respondents 5 and 6 preferred a revision on 19.4.1993 before the second respondent; that the second respondent without giving proper opportunity to the petitioner and the devotees of the temple and without any reason assigned passed an order dated 14.6.1994 in No.44430/93-K3, allowing the revision and cancelling the tree patta in favour of the temple.

5. The further case of the petitioner is that he filed a revision against the orders of the second respondent to the first respondent; that in the meantime a panchayat was held in the village and the matter was settled and the terms of settlement were reduced into writing a document dated 22.2.1995 whereby it was agreed by all including the respondents 5 and 6 that there could be no objection in the tree patta standing in the name of the temple concerned and a xerox copy of the same was handed over to the Assistant Commissioner who was available on 9.9.1996 since the first respondent was not available on that day; that even thereafter the first respondent has dismissed the revision filed by the petitioner on 30.9.1996 without hearing the parties and without giving proper opportunity for the parties. On such averments, the petitioner has come forward to file this Writ Petition praying for the relief extracted supra.
Heard the learned counsel for the petitioner and the learned Government Advocate appearing on behalf of the respondents 1 to 4 as well and the materials placed on record have also been perused.

In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, this Court is able to assess that the fourth respondent by his proceedings in Na.Ka.No.8295/91G dated 28.8.1882 has passed an order permitting the petitioner temple to utilise the usufructs of 13 coconut trees standing in the temple poramboke comprised in S.No.79/2 to maintain the temple. On the same date 2C Patta had also been issued by the fourth respondent in favour of the petitioner temple. As seen from the receipts filed in the typed set of papers respectively dated 5.l12.1992 and 26.7.1994 issued by the Village Administrative Officer of the concerned village, a sum of Rs.104/- and Rs.208 had been collected from the temple as tax for 2C Patta. Further, it is seen from the typed set of papers filed by the petitioner that after cancelling the 2C Patta by the second respondent, various representations have been sent by the petitioner and the devotees of the temple. Further it is seen even at the time of pending the revision before the first respondent, in a panchayat held by the concerned villagers including the respondents 5 and 6 have settled the matter themselves and have given in writing no objection for the grant of 2C patta in respect of 13 coconut trees in favour of the petitioner temple.

Considering the above fact situation, this Court is of the view that the first respondent without assigning any reason and without affording opportunity for the parties to be heard, has passed the impugned order and therefore, the order of the first respondent confirming the order of the second respondent District Revenue Officer becomes only liable to be quashed confirming the order of the Tahsildar made in proceedings No.NK 8295/91G dated 28.8.1992, which is came to be confirmed by the Revenue Divisional Officer on 18.1.1993 and hence the following order:

In result,
(i) the above writ petition succeeds for the foregoing reasons assigned and the same is allowed;

(ii) the order dated 30.9.1996 made in No.D.dis.F2/53933/94 by the first respondent confirming the orders of the second respondent dated 14.6.1994 made in No.Na.Ka.44430/93-K3, is quashedl;

(iii) the order of the Tahsildar made in proceedings No.NK 8295/91G dated 28.8.1992, which is came to be confirmed by the Revenue Divisional Officer on 18.1.1993 is restored;

(iv) the respondents 1 to 4 are directed to restore the 2C tree patta in respect of the 13 coconut trees in Survey No.79/2, of Karuthipalayam Village of Erode Taluk, Periyar District to the petitioner's Temple.

(v) however, in the circumstances of the case, there will be no order as to costs.

Index:Yes

Internet:Yes

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To

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Chepauk, Chennai-5.

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3. The Revenue Divisional Officer,
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Erode Taluk, Periyar District.

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